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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/990,115	11/21/2001	Anthony Messina	998.816	2803

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MYERS BIGEL SIBLEY & SAJOVEC
PO BOX 37428
RALEIGH, NC 27627

EXAMINER

COLE, ELIZABETH M

ART UNIT	PAPER NUMBER
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1771

DATE MAILED: 04/29/2005

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/990,115
Filing Date: November 21, 2001
Appellant(s): MESSINA ET AL.

Needham James Boddie, II
For Appellant

EXAMINER'S ANSWER

MAILED
APR 29 2005
GROUP 1700

This is in response to the appeal brief filed March 7, 2005.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

No amendment after final has been filed.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

6,335,379	Leenslag et al	1-2002
6,071,619	De Winter	6-2000

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1-15, 16-26, 52-72 are rejected under 35 U.S.C. 103(a) as being unpatentable over De Winter, U.S. Patent No. 6,071,619 in view of Leenslag et al, U.S. Patent No. 6,335,379. DeWinter discloses a method of applying elastomeric skin material such as

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polyurethane, (col. 5, lines 20-30; col. 6, lines 35-36) which can be applied by spraying in one layer, (col. 7, lines 35-36). DeWinter teaches that a second layer of polyurethane can be spray applied, (col. 6, lines 40-44). DeWinter teaches that this method of spraying polyurethane as skin layers is utilized in the automotive industry for interior trim parts for the automotive industry which would correspond to the claimed firewall, dashboard insulator, floor covering and upholstery. DeWinter differs from the claimed invention because it is silent about the sound attenuating properties. Leenslag describes polyurethane foams which are used in automotive seating, (col. 2, lines 24-27), as well as foams for sound insulation for automotive applications as well as vibration isolation, (col. 8, lines 35-40). Leenslag describes the temperature ranges necessary for application of the polyurethane foams in order to meet the particular needs for the sound insulation, (col.8, lines 22-27). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the method of DeWinter by employing the material as sound insulation as taught by Leenslag. Since Leenslag teaches employing the polyurethane foam as sound insulation, it implicitly teaches the step of first ascertaining the acoustic properties of an articles to identify areas where sound attenuation is necessary.

(10) Response to Argument

Appellant summarizes case law and the DeWinter and Leenslag references in parts I and II of the arguments but does not present any arguments which can be addressed.

In part III, Appellant argues that DeWinter does not teach the claimed steps because DeWinter does not teach ascertaining where to apply additional sound attenuating/absorbing material to a material within a mold and then forming the substrate and additional material into an article. However, DeWinter teaches a process of molding elastomeric materials which comprise plural layer of elastomeric material. DeWinter teaches that such materials can be used to form various parts for automobiles. DeWinter does not teach that the sound attenuating characteristics of the material should be considered. Leenslag teaches that molded elastomeric polyurethane materials can be employed as various components in automobiles and can be used as sound insulating materials. Therefore, since Leenslag teaches employing the polyurethane for sound insulating, Leenslag must be teaching that the foam has been noticed, (which corresponds to the step of ascertaining acoustic properties) and that the foam should be applied where the sound is a problem, (which corresponds to applying the polyurethane on the substrate only in the identified areas). Appellant argues that this line of reasoning is not supported by clear and particular evidence. However, in order to employ a material as sound insulation, which is taught clearly and particularly in Leenslag, the sound would first have to have been noticed and the insulating material would have to be placed where the sound is noticed so that it could effectively provide sound insulating. There is no other way to employ a sound insulation material other than to put the sound insulation material in places where sounds had first been heard. Putting the sound insulation material where there were no sounds would not be using the material as sound insulation. Putting the sound insulation material in a different

place than where the sounds were noticed would not be using the material as sound insulation. Leenslag clearly and particularly states employing the material as a sound insulation material and therefore Leenslag teaches the step of noticing where there is sound which is undesirable and then putting the sound insulating material at those areas where sound insulation was desired.

Appellant argues that there is no motivation to modify DeWinter as taught by Leenslag because the skilled artisan looks to DeWinter for how to apply different colored materials to a substrate aesthetically. However, DeWinter is drawn to a method of forming dashboards and other interior trim parts for automobiles. It would be desirable to apply the sound insulating material of Leenslag in an aesthetically pleasing manner as well. Combining the teachings of Leenslag and DeWinter would not destroy the material of DeWinter but would instead enhance it because it would allow the material of DeWinter to be both visually pleasing and sound absorbing.

Appellant argues that Claim 8 requires identifying areas of the article through which sound within a predetermined frequency range passes at an intensity level that exceeds a threshold intensity level and that neither reference teaches this step. However, since Leenslag teaches sound insulation, the step of determining whether undesirable sound was present would necessarily include comparing the sound heard to an acceptable level of sound in order to determine that the sound heard was in excess of that level.


With regard to Claim 14, DeWinter clearly teaches forming materials having recessed portions to which additional polyurethane can be applied. See the

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figures of DeWinter which all show forming materials with recessed areas. With regard to claim 15, Appellant argues that DeWinter does not teach forming a second article with the substrate and applying polyurethane to the second article. However, DeWinter teaches forming molded articles which comprise plural layers of polyurethane and then adding additional skin layers and other layers to form a finished article which can then be further processed to form a finished articles such as a dashboard. . See the example at col. 5, lines 52- col. 6, line 64. Appellant argues that DeWinter does not teach forming a secondary article such as a plastic pass-through with a substrate. However, the claims are not specific as to the particular item which is formed.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,


ELIZABETH M. COLE
PRIMARY EXAMINER

Conferees:

Terrel Morris - 

Rena Dye - 